

BOARD OF ZONING APPEALS

Minutes

July 27, 1999

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas, was held at 1:30 p.m., on July 27, 1999, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance: BICKLEY FOSTER, JOHN ROGERS, FLOYD PITTS arrived at 1:40 p.m., JUANITA SWANN, DAVE BABICH, DOUG MALONE, were present. RANDY PHILLIPS was absent.

The following Planning Department staff members were present: Secretary, DALE MILLER, and Recording Secretary, ROSE SIMMERING.

Also present was J.R. COX, Office of Central Inspection, SHARON DICKGRAFE, Law Department.

1. Swearing in of Officers

FOSTER: It is 1:32 p.m. and I will call this meeting to order. The first item is the swearing in of officers. It says officers but, it is the members of this Board and we will wait. At some point the City Clerk may be available and we may interrupt this meeting to be sworn in. But, I assume that we are legal enough to start the meeting. We have several approvals of minutes. I think we should take them individually, because different people were here at different times. Let's begin with the one for August 25, 1998. We are catching up on our minutes as you can see. Does anybody have any changes for August 25, 1998?

2. Approval of minutes for August, September, October, November 1998.

MALONE moves and ROGERS seconds to approve minutes for August 25, 1998.

MOTION CARRIES 5-0.

FOSTER: Let's take the minutes for September 22, 1998. I notice I was there and John and so forth, again we should probably look to see whoever makes the motion that we were present during that meeting. Do I hear a motion for September 22, 1998?

ROGERS moves and SWANN seconds to approve minutes September 22, 1998.

MOTION CARRIES 5-0.

FOSTER: Next item is October 27, 1998. Noting who was present it looks like almost all of us were here. Do we have a motion to approve or any corrections?

SWANN moves and ROGERS seconds to approve minutes for October 27, 1998.

MOTION CARRIES 5-0.

FOSTER: The next one is November 17, 1998. Are there any corrections to these?

MALONE moves and ROGERS seconds to approve minutes for November 17, 1998.

MOTION CARRIES 5-0.

FOSTER: Now, on the next meeting May 25, 1999. This is the meeting that we had an appeal involved on it. I have a couple of minor corrections on the first page, at the bottom in the last paragraph instead of (out) I think it means we (ought) and on page thirteen in the middle of the page there the work (bylaws). Now Rose puts those in to keep us on our toes. I look for those. Are there any other changes to the bylaws? As I understand it, Sharon, you have looked at these minutes?

DICKGRAFE: Yes.

FOSTER: For this particular case because it went onto court. Do I hear a motion to approve the minutes of May 25, 1999, with the two corrections?

SIMMERING: I am not seeing the first correction.

FOSTER: Right at the bottom, four lines up on the right hand side instead of we (out) it should be we (ought). Do I have a motion?

SIMMERING: Ok, Thank you.

SWANN moves and ROGERS seconds to approve minutes for May 25, 1999.

MOTION CARRIES 5-0.

FOSTER: Today we have four cases. Anything withdrawn or anything like that Dale?

MILLER: No.

FOSTER: For applicants here they should be aware that it takes four votes of this group to pass and actually act on a case. There are five members here today. We will begin.

3. **Case No. BZA 18-99, Boyer Wichita Medical L.C., pursuant to Section 2.12.590B, Code of the City of Wichita, request a variance to allow a reduction of the compatibility setback requirement in order to develop a new medical building of property legally described as follows:**

A complete legal description is available for public inspection at the Metropolitan Area Planning Department, 10th floor, City Hall, 455 North Main Street, Wichita, Kansas. Generally located east of Hillside and south of Country Club Place.

FOSTER: This is a continuation right?

MILLER: That is correct. This case was deferred at the last meeting in order for the applicant and the adjoining property owners to meet. It is my understanding they have met and there should be a document at your seats that has the Boyer Company logo on the top of it; which outlines the accommodations and agreements that they have reached between themselves in terms of resolving the issues.

If you remember back, this is the case where Wesley Medical Center wants to build a new family practice facility. The way the site is shaped, being in the "L" shape pattern, the building, in order to build the building the size that they were after was going to have the encroach into the compatibility setback requirement. A building this size would need a lot of frontage. The size that this is would require a 25' building setback and I believe they are able to provide 11' setback. We have gotten a lot better handle on that distance since the first meeting. So, they are requesting a variance to the compatibility standard that would require a 25' setback.

As I said they are able to provide an 11' setback and the document here that was provided to you describes some of the things that the applicants and the neighbors have agreed too. Such as on the trash pick-up. The owner and Wesley Hospital will not permit the pick-up of garbage between 10:00 p.m. and 7:00 a.m. They have agreed that the building can be within 11 feet of the property line and that there will not be any paving or vehicular traffic access to that particular portion of the building. That they will install a six-foot vinyl fence and that Wesley will put up traffic signage to try and encourage folks to turn right only on Orchard Avenue. There will be some other landscaping and lighting provision that are found on page 2. It looks like there are about six initials that I presume represent the neighborhood residences and the applicant's and maybe the neighbors are here as well and would be able to explain, if you have specific questions about this particular document. Beyond that, staff is supportive of the reduction in this compatibility setback standard and I can go through slides, unless you remember them from last time. It is up to the Boards pleasure.

FOSTER: Which one of our members, of course we have a new member, Dale, I think we ought to see the slides. One or more members may not have been here.

ROGERS: Do we need to reflect in the minutes that Mr. Pitts is here to hear this case in its entirety?

FOSTER: Mr. Pitts was late and is here now to hear this case in the entirety.

MILLER: I have not been out there since the case was first heard and these slides were shot. If these houses are still here, at least these, the intention is that they will be removed at sometime in near future to make way for this improvement. Orchard is here, Hillside here, and Country Club is here. They are proposing to build this medical building. The idea for the siting for this particular lot was because there are homes situated on the south side and along the east side of the property that is adjacent to the application area. They would build the medical facility to the eastern most portion of their ownership, keeping their parking out towards the Hillside Street frontage. So that the area that you would typically expect to have the most activity, lightening and noise and so forth would be the furthest away from the residences here on the south and to the east.

Here is the area that is in question in terms of the encroachment that they are asking relief today. The slides are not really good and it was hard to get a good shot of what we were trying to shoot here. If I understand correctly, this is one of the houses that would be removed to make way for their parking lot. This is shooting eastward down the property line between Wesley property and the residences. There is a utility easement in there. As you can see at that time it was over grown heavily by volunteer trees. I believe at the last meeting the neighbors testified that most of these trees if not all had been torn out for site preparation. Just another shot of what it was like at that time.

FOSTER: Any questions for the staff? Thank you, Dale. Mr. Babich, I might point out that we have heard this for probably for nearly an hour at the last meeting. It has been quite intensively discussed. We do have six members here so if you feel comfortable and you feel that you have heard enough about it, you have of course have the right to vote. On the other hand, if you feel you need more information, you could abstain from voting. Whatever you are comfortable with.

BABICH: Ok, Thank you.

FOSTER: Would the applicant come forward.

RUSS EWY, BAUGHMAN COMPANY: Dale did a good job of recapping last months discussion on this item. I would like to add one piece of information. If you recall there was some discussion centered on the location of the trash dumpster. I would like to remind you that is still one of the conditions of approval written in your staff report. We were asked to see about whether or not we could relocate that some place towards the rear of this site. Which would move it away from the adjoining property owners. There was no relocation of that dumpster that would really fit into the overall site plan where it would be easy for the trash pick-up. I believe as Dale mentioned, the first item in the agreement between the neighbors and the Boyer Company addresses the dumpster I believe to their satisfaction. I will let them correct me if need be. I would be more than happy to answer any questions. I would like to take the opportunity to extend the appreciation of the applicant for allowing us the month to discuss this with the neighborhood. Myself, I had quite a learning experience and it showed that a little negotiation could go a long way.

FOSTER: Mr. Ewy, number three the fence. I am perhaps not as familiar with vinyl fencing that I would like to be. Could you describe what that would look like?

EWY: Certainly, over the years, there was maybe, perhaps J.R. Cox of Central Inspection has a little bit more hands on experience with this type of fencing. But, there is a new fencing product that is made out of vinyl. Basically, in an effort to avoid the rot and the decay and the general decline in quality that you find in cedar or wood fencing. It maintains a fresh painted appearance to the best of my knowledge. I have seen it used around the College Hill neighborhood and this was something required that the fencing we were required to place was a 6' to 8' wood fence. There was some concern by the adjoining property owners that that may over time dilapidate to the point where it would become a maintenance hazard and an eyesore. Mr. Summerhays of the Boyer Company expressed or stated that there was this product available and that if the property owners thought that would be a better alternative to standard wood fencing then they would agree to it, which they have.

FOSTER: Is this like solid sheet?

EWY: You can get it. It comes in a variety of styles and colors. The ones that I am familiar with resemble pretty nicely a picket fence. Individual pickets with the cross members and the post. This will have to be a solid fencing with solid vinyl planks attached to your standard structure.

FOSTER: Do we have any other questions for Mr. Ewy? Seems to be your good day Mr. Ewy.

EWY: It appears so, today is not over yet.

FOSTER: We will open this up to the public. Are there any members of the public that would like to speak to this particular case BZA 18-99? See smiles back there. We will let the meeting minute's note that there were no citizens speaking to this. We will confine the discussion to the Board. What would be your pleasure?

MALONE: Dale, I was not here at the last meeting to hear this originally. It appears that all they are doing is changing the setback by 5 feet. Is that correct?

MILLER: Technically, it is going from what should be 25 feet because it is the compatibility setback and it is not a zoning setback. Because of the frontage that they have on their property they have a maximum setback of 25 feet and so they are reducing that from 25 feet down to 11 feet to the face of the building. There is a window well area that is noted on number two of their agreement, that indicates that window well area maybe as close as 8 ½ feet. But it is my understanding that as long as it is less than a certain number inches the OCI does not count that as an encroachment. J.R. Cox maybe able to give you the exact numbers. It does not count towards being a building so to speak.

MALONE: Thanks, Dale.

FOSTER: Any other discussion of the members? The main reason this was continued the last time was that there really had not been an interchange of information between the applicant do to certain circumstances and they have obviously worked out their problems. This was something that was zoned over a year ago for commercial and they could literally go ahead but this was an opportunity the neighbors have had to look at again and make suggestions.

BABICH: Yes, on page 2, items 5, 6, 7 each refer to neighbors and it seemed to me there is some ambiguity there that would lead itself to possible trouble later on.

FOSTER: On the staff report?

BABICH: On the letterhead agreement.

FOSTER: On the article from the Boyer Company, on page 2, items 5, 6, and 7.

BABICH: I wonder if the neighbors are represented by a homeowners association?

FOSTER: You are wondering if they are?

BABICH: Yes.

FOSTER: I doubt it given the age of the community there. Does anybody know?

AUDIENCE: Not by an association, we call ourselves Orchard Neighborhood Association but we are not a formalized homeowners association.

BABICH: I was just concerned at who would be the actual representative that would examine safety precautions to their satisfaction, the landscaping to their satisfaction, and the lighting to their satisfaction.

FOSTER: The only thing that would be actually enforceable would be the rules of the zoning regulations and looking on page 4 of the staff report these are the conditions that are required. These are the only things that the staff basically would be enforcing. Let me ask, Dale or J.R. Cox, would there be any better answer for Mr. Babich? In other words, do we have things in here that they have made arrangements with the neighbors, we are not enforcing this letter?

MILLER: That is correct. This is basically a private agreement between the applicant and the neighbors as far as the items contained in this memo that they are comfortable with. The only two things that staff is interested in is item number four on the traffic flow. I think the sign that they have agreed to will probably take approval from the traffic engineering in order to do that sign. We do not object to the notion that they have agreed to it and that if traffic engineering is satisfied with it, we do not have a problem with it. But, if for some reason traffic engineer would feel like that was a safety hazard then they may not allow that sign to go up.

The other little technical item that J.R. Cox is reminding me of is that on item number three, it says a six-foot vinyl fence. The code has a clause in there that says the fencing material or screening material is suppose to be made of things commonly used in construction. I do not know that the planning department particularly has a problem with the vinyl fence but it maybe an issue in terms of strict interpretation of what the code says.

COX: I was just getting ready to say something to the Board, Mr. Chairman. I would also agree, that I would not be enforcing this. I will only be enforcing the conditions that you as a board put on it. But, if someone were to call me today with a commercial project and ask if they could use a vinyl fence to install between their project and a residential area I would say no.

FOSTER: The regulations do not say and the “like”?

COX: It states: “Screening walls and fences shall be constructed of standard building materials customarily used for wall and fence construction. Such as: brick, stone, concrete, masonry, and stucco, concrete or wood. It does not mean that the superintendent would not and could not interpret that this would be ok. It may do the job that it is suppose to do. To the best of my knowledge I have never seen it used for this type of activity.

FOSTER: I like the wording, “such as”.

COX: “Such as”?

FOSTER: It means examples.

MILLER: There is some room here. It does say customarily?

COX: Customarily used.

EWY: I would say that in a typical situation if it got down to that during site plan review, we would petition, Kurt Schroeder, Office of Central Inspection to make that interpretation, and clarification. I think that since we are in front of the BZA with this matter, I would ask a question of you to see if it would be something that this Board here could define.

DICKGRAFE: Not without Kurt doing an interpretation first. We have no jurisdiction.

FOSTER: Because it would have to be appealed to us if he made an interpretation that was questionable. In effect, we are not really voting then on this particular fence. This will have to be determined by the process of applying for the permit. Now, Mr. Ewy mentioned Dale, a site plan is that another step here that they are going to have to submit at some point?

MILLER: They did have a site plan.

FOSTER: Well, I mean to anybody else than us? I thought there was some implication that a site plan would be approved? You mentioned that would be resolved in the site plan.

EWY: We would develop and submit on behalf of the applicant, building plans that would be reviewed by a Central Inspection Plans Examiner.

FOSTER: To obtain the permit?

EWY: Exactly.

FOSTER: So, we will not have any control over than the fence design today. Although I think it is a good idea. I think it is a coming thing. I just have not seen enough of them to really know how they operate. I see them advertised a lot. What other discussion does the Board have? It appears to me that they have worked out their problems. Do we have a motion then?

MALONE moved PITTS seconded: That the Board accept the findings of fact as set forth in the Secretary's Report; and that all five conditions set out in Section 2.12.590 (b) of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions set out in the secretary's report.

With the three conditions set forth on page four of the staff report.

DICKGRAFE: Mr. Foster, so that the record is clear. I have spoken with the City Clerks office and I believe that Mr. Babich has already been sworn in as a member. He went to the City Clerks Office. So the record is clear that he is sworn in and can certainly vote on this matter.

FOSTER: He just has the choice whether he has heard enough to do that.

DICKGRAFE: That is true.

MILLER: The only other clarification I think the staff report still shows 14 feet on Item #1 and I verbally indicated that it should be 11 feet. We will change that on the resolution just to make sure.

FOSTER: Is that satisfactory to you Mr. Ewy?

EWY: Yes.

FOSTER: We have a motion. Is there any further discussion? Call the question.

MOTIONS CARRIES 6-0.

4. **Case No. BZA 25-98, , Wichita Residence Associates, pursuant to Section 2.12.590B, Code of the City of Wichita, request a variance to increase the height of the permitted pole sign from 25 feet to 35 feet of property legally described as follows:**

A complete legal description is available for public inspection at the Metropolitan Area Planning Department, 10th floor, City Hall, 455 North Main Street, Wichita, Kansas. Generally located at Orme and Main Street.

FOSTER: This case goes back a while.

MILLER: This is a case that started back in January 1999, it has gone through various iterations to what we are looking at currently. This is a request to increase the height of an existing 30' pole sign to 35'. This sign would advertise the Cambridge Suites Motel by Candlewood. It is located just south of Kellogg and just east of the bridge going over where Kellogg goes over the river. The site is kind of tucked away there with the raised portion of Kellogg and because of the river. It is somewhat a difficult site to see and the applicants feel like they need to have a sign that is more visible than the one that they currently have there for folks to get off at the right spot to find their motel facility. I think we all would agree that a least part of the success of a motel depends on how easy it is to be found. Staff is supportive of this request to increase the height of the sign to 35 feet. There is a diagram of the sign attached to the back of your staff report. It gives the dimensions, and indicates that it would be 12' 8 1/4" wide by 8' 3 1/4" tall in terms of the actual face of the sign is the way to describe it. There is an aerial that you can see Kellogg. The elevated portion of Kellogg runs through here. Obviously the bridge over the river. Part of what they would be doing is moving the existing sign located currently behind the laundry building closer to the property line. This being Kellogg here the overpass portion and these other buildings are existing buildings on the site and they would move those pole signs forward with this request and then increase it in height 5'. There is a slide of what they are proposing to put up there. The existing sign looking somewhat to the southwest. A little better shot of how it sets on the property today. The sign would then be moved from the rear here to in front of this particular building in this approximate area. A shot looking straight east. There is an access point here to a residential street, this area is paved. That was looking to the west and this is looking to the east. You can see the elevated portion of Kellogg and this would be the off ramp.

Again we think that the request should not be of anymore impact than what is out there today. The size of the sign is not excessive. Hardship as I indicated in terms of the ability to find a motel is important to its patrons and to the success of the motel. In terms of public interest the purpose of the sign code is to make sure that folks can find what they are looking for without allowing for excessive or unsafe kinds of distractions and we do not think that the sign that they are proposing falls into that category and it is not going to encroach on any right of way. With respect to spirit and intent in a 5' increase in this particular location we do not feel like is violating that particular clause. There are three conditions that we are recommending subject to approval. That being that the sign be no more than a maximum of 35' and being developed in substantial conformance with the diagram that is attached to your staff report, and that they get all of the necessary permits that they need.

FOSTER: Dale, have you gotten an idea as to how easy this will be able to see at 35'? Remember we had questions of how high it had to be. Does this give them enough of an exposure to the traffic there?

MILLER: I would say that it certainly improves what exposure there is. I think they are satisfied with it. They would probably be better to answer that question than I am. We think that a 5' increase is a reasonable increase and as you know we have objected to the other increases that they have asked in the past and so we think this is a good compromise for all concerned.

FOSTER: Any other questions for staff?

MALONE: Dale, I have heard a bunch of these cases and with good reason when you set a precedent around Kellogg and West Street. Do you remember what those heights have been?

MILLER: No, I really can not estimate. Since I was not doing that directly I do not remember what those heights were. I do know that there was a series of cases they did ask for increases. I know that we did not support some of them and some of them we did. I can not give you exact figures.

MALONE: This was withdrawn, or was deferred twice and then withdrawn?

FOSTER: They started out around 60' I guess. So that is why it has gotten to how it is.

MILLER: Originally, they asked for 50' or 55'. Then they felt like there was a misunderstanding with the person who was handling the case before or comments that they heard from the Board. That based on the original recommendation for denial that if they would come back and one of the reasons was that 50' would not do them much good so they ought to be higher. So they felt like they were getting encouragement to ask for a taller sign and I guess they can speak for themselves. My impression is they felt like they got back-whacked on the second request and so with that recommendation by staff, by denial and it appeared that the Board at that time the way that it was configured was not really inclined to provide the relief that they were seeking. They withdrew the case and then a month or so ago, the agent called and said that they thought they had worked out a better accommodation in terms of moving it forwarded. They did not think they needed as much height. So, I said in terms of staff trying to meet them half way we would just use the same case number and not ask for a whole new filing fee. Just enough to cover the expenses of mailing the things out so that maybe we could get this done and everybody could move on.

FOSTER: There is at least, one or two signs there on the north side there are somewhat comparable to pole signs. I do not know the height but they certainly have the same appearance. Any other questions?

ROGERS: Dale, on the secretary's report under the request, it shows that we are increasing a pole sign for 25' to 35'. But then on page two under the background it shows that it is existing 35'.

MILLER: Yes, I guess there was some discrepancy in terms of the sign code. J.R. Cox can help me out here because he knows the sign code better than I do. But apparently 25' is the permitted height. I can not explain how this one is 35' and so that is why there is a discrepancy and we just wanted to make sure that the correct legal change or adjustment from 25' to 35' was covered but the existing sign as we understand it is 30'.

FOSTER: Is the actual advertised variance then, 25' to 35'?

MILLER: Yes.

FOSTER: Does that answer your question, Mr. Rogers?

ROGERS: Yes.

BABICH: Can you distinguish between the length of the pole and the length of the overall sign? Is that possible?

COX: Sign heights are based on the overall height of the sign not the length of the pole structure.

FOSTER: Ok. We will call on Judy Manka. Please identify yourself and your address please. And I am going to ask you a question.

JUDY MANKA, LUMINOUS NEON COMPANY, 4129 West 4th Ave. in Hutchinson, KS 67504.

FOSTER: Have you had a chance to read the secretary's report?

MANKA: Yes, we have.

FOSTER: Are you in agreement with the secretary's report?

MANKA: Yes, we are. I might just address a couple of issues I think for people who maybe haven't heard the case before and answer to Mr. Malone's question. The signs that are on Kellogg and West Street are 50' tall. But it was determined that was a separate issue that wasn't like coming into downtown Wichita so that was, I think, the objection the first time. In terms of setting a precedent, we were asked at the last meeting to determine what the height of the Kellogg fly-over was at that point. It seemed to be amiable to the Board to consider allowing the Cambridge Suites sign to do what other signs do in the area which basically is to start with the bottom of the sign at the height of the Kellogg bridge at that point. I do have some information about that if you care to look at it in terms of setting a precedent. I think that is the only new thing that we bring to you different from what was at the other meetings would you like to see that?

FOSTER: Let's see if any of the Board would like that.

PITTS: I think I would like to see that.

MANKA: This is a survey that was done by our crew. They for safety purpose it was taken really just west of where the Hotel is located. So at that point to where the bridge is really rising up and you will see there that it was determined it was 25' 6". So we think that it rises at least another 1 1/2' to maybe 3' which is certainly going to put it at 27' to the top of the bridge.

FOSTER: Please return to the microphone so we can pick-up your comments.

MANKA: If the height of the bridge at that point is at least 27'. We have got a sign that is 8' to the very top that is how we arrive to at what we consider the 35' overall height as a precedent compatible height.

FOSTER: In other word someone would be able to see the sign and would be able to get off at the intersection or interchange?

MANKA: We are not suggestion that this solves the problem. The 60' sign would have solved the problem. This will improve the situation. I think this, as we understand it, is the most that we can expect to get as a part of a variance application. Due to the fact that there are concerns about setting a precedent in the downtown area. Now I am not going to suggest that by raising the height by 5' that it is going to give people time to get off. It will improve the opportunity to do so. But, I think to say that it is going to totally solve the problem, no, I can not say that it will totally solve it. It will help.

FOSTER: Ok, is there anything else that we need to hear? Any question for Judy Manka? Mr. Babich just a little case history. Our concerns and she has expressed them, has been that as you recall, when you come to that point you really see the downtown area for the first time. That has been the concern about keeping the signs not to high in that location.

BABICH: I am just struck by the difference between 35' and 60'. I am trying to resolve that in my own mind. That is a lot of difference.

FOSTER: Anything else than Judy?

MANKA: I don't think that I do.

FOSTER: Is there anybody from the public wishing to speak to this item? I will confine the discussion to the Board. If the Board would note, you do have a blue sheet, which is the result of presenting this to the CPO in which they voted 7-0 to recommend approval of the request. If I recall, I guess they have not approved it previously. Were you there before the CPO previously?

MANKA: I will let Greg address that.

GREG KOSSOVER, WICHITA RESIDENCE ASSOCIATES THE APPLICANT: We were actually at two CPO meetings. The first one was approved unanimously and this was back in January of 1999, not 1998 as the minutes reflect. Or as the secretary's report reflects. When we went back for the amendment, we had to return to the next CPO meeting. We went to that meeting and the location that was provided on the CPO minutes was not where the meeting was held and consequently we were not there. Because we were not there they denied the motion. We were where the notification told us to be and then we went again last night for the third time and got unanimous approval. Both times we had been present and we received unanimous approval.

FOSTER: I am sorry that you had such a difficult time on this. Let's confine the discussion for the Board then.

PITTS: Mr. Chairman, I think their request is reasonable and the Board perhaps did give some indication at the previous hearing that we thought 60' would not be allowable and also that it is a possibility that they could relocated the sign to give it better view. I intend to support this motion.

FOSTER: I just want to make sure again, Dale, are we to make a motion from 25' to 35' or 30' to 35'?

MILLER: 25' to 35'.

FOSTER: So that the minutes will read as such.

MALONE: They are currently in violation?

MILLER: We do not know. I can not find anything that shows one way or the other.

MANKA: I think I can address that. I think what happened was that the sign has been there for a long time. It was the Residence Inn at one time. At the time that the sign was permitted I think that the lot that is to the north was a part of that property. Therefore, and this was before the new sign code to. I think that gave them more setback room and gave them the additional 5' of height. So I think the 30' at the time that it was permitted, J. R. does that sound right? Was a legal permitted height?

COX: That is probably exactly how that sign is there.

MANKA: Probably after that point, the lot to the north became a separate lot. So technically it is a non-conforming sign now but it is a grandfathered sign.

FOSTER: Any further discussion?

ROGERS moved PITTS seconds: That the Board accept the findings of fact as Set forth in the Secretary's Report; and that all five conditions set out in Section 2.12.590 (b) of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions set out in the secretary's report on page three.

MOTION CARRIES 6-0.

FOSTER: I am sorry that it has taken so long.

MANKA: Thank you. J.R., do we need to reapply for a sign permit now?

COX: Yes.

5. **Case No. BZA 19-99, Word of Life Ministries, Inc., pursuant to Section 2.12.590B, Code of the City of Wichita, request a variance to allow a 96 square foot monument sign on property legally described as follows:**

A complete legal description is available for public inspection at the Metropolitan Area Planning Department, 10th Floor, City Hall, 455 North Main Street, Wichita, Kansas. Generally located at the northwest corner of 37th Street North and Womer.

MILLER: Presenting staffs reports and shows slides.

BACKGROUND: The application area is five acres of "U" shaped platted property located west of Womer and north of 37th Street North. The site is owned by Word of Life Ministries and has developed the western portion of the application area with a school and parking. Word of Life Ministries has built a church building and parking on "LC", Limited Commercial zoned land that abuts the application area on three sides. In addition to the K-12 school and church, the church also provides childcare, preschool, Bible College and counseling services. The church is wanting to place an identification sign on the undeveloped portion of their ownership which is zoned "MF-18", Multi-family Residential advertising all these activities. The application area has over 317 feet of frontage on Womer, an arterial street.

The applicant is proposing to install a 16 foot 8 inch tall by eight-foot wide, internally lit aluminum sign. Only the upper 12 feet of the sign would contain space for copy so it is classified as a request for a 96 square foot sign. The base of the sign is to be masonry. (See attached graphics.) The sign would be located at the northwest corner of the intersection of Womer and 37th Street North. The site also has also has approximately 280 feet of frontage on 37th Street North.

The sign code permits "MF-18" zoned uses one 48 square foot sign when the use is located along a collector, arterial or expressway. Maximum height of these signs is to be 20 feet, and shall be limited to indirect or internal illumination of white light only.

At the July 27th meeting, the BZA deferred the request to the next meeting on the basis that a neighborhood representative who was protesting the application indicated there might have been confusion at the CPO and neighborhood meetings over the exact size of the sign. The Board asked the applicant to meet with the neighborhood to see if any misconceptions exist. The applicants met with the neighbors, and agreed to a sign eight feet wide and 14 feet tall. The CPO voted to approve the request.

ADJACENT ZONING AND LAND USE:

NORTH	"MF-18", Multi-family Residential; vacant
SOUTH	"LC", Limited commercial; vacant
EAST	"SF-6", Single-family Residential; arterial street, residences
WEST	"LC", Limited Commercial; church

UNIQUENESS: It is the opinion of staff that this property is unique inasmuch as it is a "U" shaped parcel with a large amount of arterial street frontage – of 317 feet. The application area and the church, which owns the site also has at least, five different uses on-site.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the applicant could ask for more intensive zoning in order to get the size of sign they need. The requested sign is no larger than the maximum size for a "multi-tenant" sign in the City's office or neighborhood retail districts, which are intended to have use and signage requirements that are compatible with nearby residential areas.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulations may constitute an unnecessary hardship upon the applicant, inasmuch as the "MF-18" district only allows a 48 square foot sign. Given the large number of uses conducted by the applicant, a 48 square foot sign advertising five activities would not be effective.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the granting of this variance allows the applicant to meet its signage needs without rezoning the property to a more intense zoning district.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch the variance allows for a sign of this size without requesting a more intense zoning district.

RECOMMENDATION: Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance be granted, subject to the following conditions:

1. The applicant shall be permitted one 96 square foot sign that is constructed substantially similar to the graphics submitted with this request.
2. The applicant shall comply with all other requirements of the sign code.
3. If any of the foregoing conditions are not met, this variance will be considered null and void.

COX: I would define this as the code would as a ground sign.

MALONE: What is the difference in your mind of signs?

COX: I work in OCI and he works in planning. We have a code that defines ground signs and it does not mention monument signs and in planning they like to call them monument signs.

MALONE: This similar style? I am just trying to understand your minds.

MILLER: This is one of these things that we are working out between OCI and Planning Department.

COX: A little bit further under the code you could actually have a pole sign where the bottom face of the actual sign might start two or three feet above grade. That would also be a ground sign. A monument sign would preclude that and be strictly this type of sign.

MALONE: I did not mean to stop you Dale.

MILLER: Continues with staff report and slides.

FOSTER: Dale, the actual request I am reading it in the text here. I gather they are talking about going from 48' to 96'?

MILLER: Yes.

FOSTER: I am trying to fully understand. It says 16' 8" by 12' tall. Are we talking 12' tall and 16' wide or the other way around?

MILLER: Let me get back to the diagram with the dimensions. You can see here the total height of the sign from base and ground to the top is 16' X 8" tall. The copy area is the top 12'. The sign is 8' wide.

FOSTER: Ok.

MILLER: There is probably a width dimension.

FOSTER: The sign is 8' wide and 16' high and the top 12' is for the reader board?

MILLER: That is correct.

FOSTER: Is the concept here not necessarily to see it from the interstate or anything like that?

MILLER: You would have to ask them for sure. My impression is that they were trying to get out closer to that main thoroughfare.

FOSTER: This would be right at the intersection, there is a light there. A person could stop and look at it so to speak.

MILLER: Yes.

FOSTER: I do recall why that is commercial. Is that it was a roller skating rink prior to the present use.

MILLER: I did not know that. That is before my time. I just know that the police academy is over here on the southeast corner.

FOSTER: And there would be houses directly to the east?

MILLER: Yes.

FOSTER: There is a new house there.

MILLER: Right.

FOSTER: Any other questions of the staff?

BABICH: Does this property, would it allow more than one sign in its current configuration?

MILLER: I do not believe so, in terms of the way the application has been filed. Because it is MF-18, 48 square feet is all that you get. Is that correct J.R.?

COX: Yes that is the current interpretation of the zoning laws.

FOSTER: Because it is multiple family.

SWANN: If they rezone, can the rezoning have an effect on how large they can have the sign?

COX: It depends on the frontage. It would be over 240 square foot of clearance.

FOSTER: 317 feet frontage.

COX: 80 percent of their frontage in LC zoning and with that much area it might be able to go to 35' height possibly.

FOSTER: I think the interstate up there is depressed if you recall. It goes under the interchange there and it would be pretty hard to see it. I do not see that it is going to attract very much from the interstate itself. Anymore questions of staff?

PITTS: On a monument type base, we do not take that into consideration as the total square footage of the sign at all?

MILLER: No.

PITTS: It doesn't have something to do with obstruction of vision on the sign size?

COX: There are sight triangles that they have to make sure that the sign is not located in when it is a ground sign. But it is not counted in the base as far as signage, unless it becomes an integral part of the sign. At this point it does not.

PITTS: Unless it becomes an integral part of the sign.

COX: Unless they somehow make the base part of the signage display, either by logo or some type of unique pasting.

MALONE: Floyds' question was do they count it as part of the height?

PITTS: No, I was not speaking of height.

MALONE: I thought you said high.

PITTS: The size of the sign itself.

FOSTER: Any other questions of staff? Thank you, Dale. We will call on the applicant.

BRAD TEETER SPANGENBERG PHILLIPS ARCHITUTURE: Acting as the agent and I am also a member of the church. I might clarify just some of the questions that came up. I think that the application area shown is actually a little bit larger than what the church actually owns. Can you go back to the first slide? I want to get to the first slide. The northwest street ends in a cul-de-sac approximately 40 feet of the north end of that cul-de-sac there is a east west property line which is the end of our property. < Away from microphone> I am pretty sure the Highway Patrol Department owns it. That was just a clarification. We are not trying to get any kind of visibility of this sign from the interstate as you are heading north on I-235, you can just barely see the back of the elementary school but you can't see all the way to that intersection at 37th Street and Womer. Our intent is just from that intersection to have visibility for the sign. Someone asked whether or not more than one sign is allowed and right now we have two buildings on our property and we plan to have possibly two more on that vacant portion which is just west of Womer. The interpretation from Central Inspection was that if each one of those buildings were a separate business then you would be allowed a monument sign for each one. But, because they all fall under the single entity of Word of Life Ministries we are only allowed one sign. That is the only sign planned for this site. We have no objection to the three recommendations that staff has given in their report. I will be happy to answer any other questions.

FOSTER: Mr. Teeter, which direction would the sign faces if I wanted to read it from the interstate?

TEETER: It would be east-west so that as you are heading north and south you would be able to read the face of the sign.

FOSTER: You could read on-coming from the north and the south. It would be on both sides?

TEETER: Yes a two-sided sign.

FOSTER: What we are seeing will be double?

TEETER: Front and back.

FOSTER: So there is highway 96 on one side and highway 96 on the other?

TEETER: Correct.

FOSTER: How large are these letters?

TEETER: The largest letters are at the bottom. They are 8" high and if you look. These are 8" high and these are approximately 6" high. The little marquee that is out there right now is 8" high letters and that is what we felt was the most readable height of letter that we needed from that intersection.

FOSTER: Did you attend the CPO meeting?

TEETER: Yes, I did.

FOSTER: Do you recall what their concerns were? It is pretty noticeable 5-0, and they seem to be in one accord.

TEETER: There were quite a few comments, but I think that the general consensus was that they were trying to protect the adjacent residences from a sign that was too large. I just think they felt that it was too big of a sign. That it would distract the neighbors as they came across that intersection.

FOSTER: Were any of the neighbors present? I do not see any listed here.

TEETER: No.

FOSTER: There is a new house to the east, but other than that it would be pretty hard to see this from a residential stand point from the south. Any other questions for Mr. Teeter?

BABICH: This is probably not a concern of the Boards. It seems to me that it would be more of an issue of how you are going to identify multiple buildings on the campus verses the large sign explaining what is already on the campus.

TEETER: Our concern is that the main traffic is on Womer and we would like them to know where to turn on that intersection. The future buildings that would be on the vacant portion of the site would most likely turn where the front would be facing west away from Womer. Any signage that would be on the front of those buildings would not be visible from Womer. We are trying to get the public to turn at that intersection and then once they do and get into the Meridian Street, they would be able to see the sign on the building. Does that answer your question?

FOSTER: Any other questions, Mr. Malone?

MALONE: Yes, I have a question for maybe Dale and maybe Brad. On the secretary's report you have the highlighted area that is the application area. Is that the five acres Dale?

MILLER: Yes.

MALONE: That is the five acres.

TEETER: Yes that is correct on the front page.

MALONE: Over three hundred feet of frontage on Womer?

TEETER: Yes.

MALONE: 317 feet.

SIMMERING: You said 317 feet?

MALONE: That is what the notes say, 317 feet.

FOSTER: Any other questions of Mr. Teeter? Let's see if there is anybody else here to speak, Mr. Teeter. Is there anyone from the public that wishes to speak on this case? Yes, would you come forward please? Please give your name and address please.

DORATHEA SLOAN, 3929 N ATHENIAN, WICHITA, KS 67204: I live near where the sign is going to be. I have just passed out petitions from the neighbors, against having the sign so large. We do not mind them having a sign it just seems to be overbearing. At our meeting I will tell you that we were told that the sign was 16' tall and 12' wide. It is in our minutes. I brought it along. That is what it was because I asked questions about it.

FOSTER: We will clarify that point.

SLOAN: Mr. Teeter was at the CPO meeting and so was I, because I am on the CPO. I asked him about the section of land that they own south of there and how many more signs that we could look forward to having as they build. The answer was basically we may in five years have more signs but of course we do not know what size they are going to be at that point. I also invited him to come to the Sherwood Glen Neighborhood Association meeting, last Tuesday and he did not come. The CPO of course voted to deny it. So did the Neighborhood Association. It is not a Homeowners Association, it is the Neighborhood Association and everyone belongs. I really do not have a lot to say, unless you have some questions about it. One thing I did ask, why was the CPO not in favor of it? They really did not want to see a sign that was 16' high out there, because we are a residential neighborhood. It is more like commercial zoning when you put those signs that high.

FOSTER: Were you at the CPO meeting?

SLOAN: Yes. I am Chairman.

FOSTER: Would you give me your name again?

SLOAN: Dorathea Sloan.

FOSTER: Oh yes, I know you. You have been on the CPO for a long time.

SLOAN: Twenty years plus.

FOSTER: A long time. Are these petitions all-separate names? These are not copies of the same page?

SLOAN: No these are all different. I do not have the pages numbered because we just finalized them.

FOSTER: How many are we talking about?

SLOAN: Basically, 179 signatures. However, three of them put husband and wife on the same line and I only counted it once. So there are 176 signatures.

FOSTER: I think we need that for our minutes. Their main concern is the size?

SLOAN: Right. We do not have a problem with them putting a sign out there, but they are putting a sign like it is commercial zoning.

FOSTER: You all discussed this. Did you discuss it like it was 12 feet wide or what?

SLOAN: Yes.

FOSTER: I tell you when I first read it, I thought that it was 12 feet wide too with the wording I had, but I was not sure.

SLOAN: The diagram did not look like it, but in our minutes, in fact, I brought the minutes from our last meeting that it says "The agent, Mr. Teeter spoke on behalf of the Word of Life Ministries, 3811 North Meridian. According to Mr. Teeter the proposed sign would be 16' 8" X 12" internally lit and made out of aluminum with a masonry base."

PITTS: Maybe we could get through this if these petitions, if we new whether or not these petitions that were signed based on the belief that the sign was going to be 16' wide. Our consideration has nothing to do with...

SLOAN: We had one person who marked on there. They just said that it was large and I think that they thought that it was too large and the 16 feet is what bothered the CPO. The tallness of it.

PITTS: Rather than the width?

SLOAN: Yes. The width is pretty wide. I do not think that the width was probably the problem as much of a problem as the size. That is the reason why, I was hoping that Mr. Teeter would have come to our meeting, because with our association we may have been able to discuss it.

BABICH: The secretary's report says 16 foot 8 inches by 12 foot tall on page 2.

SLOAN: That is right.

MALONE: I think the question was asked earlier by Floyd about whether the base was included in that sign. The actual illuminated area is only 12 foot in height. Actually, exactly 12 foot in height, with the base it is a 16-foot tall sign. So there is some wording here that is misleading.

BABICH: I think the wording is a little misleading though, it is 16 foot 8 inches X 12 foot tall.

SLOAN: Yes.

BABICH: Both 16 foot 8 inches tall from the ground up and it is also 12 feet tall and is a part of the signage.

FOSTER: The drawing clearly shows at the top that it is 8 feet wide. Did the neighbors have the opportunity to pass around this secretary's report?

SLOAN: Yes, I had it at the meeting.

FOSTER: So they could have seen the 8 feet? You think that was brought out to them?

SLOAN: I do not know that. Because at that point I think I still thought, when he said that I asked about that at the meeting. When he said that it was 12 while we just went off of 12 and I did not pay attention to it either. I thought it was 12 up until just a couple of days ago.

FOSTER: Are there other questions then for Mrs. Sloan?

MALONE: So your concerns are height, width or what?

SLOAN: The height. The height is mainly the concern. The largeness of the sign to be honest with you. If it is overbearing. We feel very certain that we are looking at some more signs on Womer in the next few years.

FOSTER: You are talking about to the south?

SLOAN: To the south because they may build there. Getting all these large signs. I did ask the question by the way. I do not know if I said this or not, he did say probably within the next five years or something.

MALONE: You understand that the property to the south is zoned "LC" Limited Commercial? Signage rights in "LC" Limited Commercial are far greater than the signage rights at these corners?

SLOAN: They can put one on each corner than. They could have this one and move right across the street and put up another one.

FOSTER: Who could?

SLOAN: The Word of Life Church, because they own all of that.

FOSTER: They own all that red area also.

SLOAN: They have at least nine parcels of property in the area.

MALONE: J. R. Cox, would that be an off-site sign?

COX: Yes.

MALONE: So, they could not put a sign there advertising the church?

COX: Not unless an off-site sign would be permissible. In other words a billboard of any type. That CUP probably prohibits that anyway. It is old enough that it might not, but it probably does. They would have to build a building there and have a use actually there to get an on-site sign.

MALONE: That is all the questions I have.

FOSTER: Any other questions for Mrs. Sloan?

SLOAN: Thank you very much.

FOSTER: Would the applicant come back? We have another question for Mr. Teeter.

MALONE: Mr. Teeter, how big is the sign?

TEETER: It is 8 foot wide the actual sign is 12-foot high with and the base is 16 feet 8" high.

MALONE: So this would be an exhibit. The language stated in the report is incorrect. Is that correct?

TEETER: Like someone mentioned it is worded a little bit funny and it does not really give the width. I do not recall ever saying that it was going to be a 12-foot wide sign. I may have misstated at the meeting but it has always been intended to be 8 foot wide. The way that it reads in the memo from the CPO meeting is the proposed sign would be 16 feet 8 inches by 12 feet tall. 16'X 8" is the overall height including the base. Twelve feet is the overall height of the sign without the base. It has always been 8 foot wide is what we have always intended.

MILLER: I can clarify. I typed this thing and I changed it twice. We are switching from Word Perfect to Word and for some reason it hates me. It knows I am on there and why it is worded this way I am not sure. I know that I have changed it twice to try and get it back. For some reason whatever copy I printed off did not come out. What I was trying to point out was that the sign, even though it was 16 feet 8 inches tall that only the top 12 feet of it actually carried the message portion of it. Because in terms of the way OCI looks at it the base does not count towards the square footage so I would have been better off to give less detail instead of trying to be more detailed. That is my fault on the wording. I should have caught that.

FOSTER: Any other questions?

MALONE: Who is building the sign?

TEETER: Yes we have hired a sign contractor. Unfortunately he built the sign without checking the zoning. The sign is currently built in his shop and it is actually built 2 feet taller than what we are applying for. So if the variance passes we will ask him to modify the sign 2-foot smaller. So the sign is built and if the variance does not pass we would look at our other options which I believe one option would be to install it on the church property which is zoned "LC" Light Commercial. Which actually puts the sign closer to the residence and it would be 2 foot taller than what we are applying for.

FOSTER: You are talking about residence to the east? Are you talking about where the former skating rink was?

TEETER: Yes, where the former skating rink was and that is currently the church, south of there is several residences.

FOSTER: In other words you would bring it back near where the buildings are? It would be pretty hard to see wouldn't it?

TEETER: We prefer not to have it at that location. But that would be one of the options. The other options would be to ask for a change in zoning of the corner to "LC" Light Commercial. Which the map behind you there, the Wichita Landuse Guide, actually shows this applicant area as a commercial corner. So we feel that there is some precedent to ask for a zone change there.

FOSTER: Other questions?

MALONE: What are your plans for the location where you are putting the sign? Do you have any? I understand that it is expansion area.

TEETER: Nothing definite right now, but currently there are several functions that were mentioned which is the Daycare, the Elementary School, the Bible College, there is a Spanish Church and a Counseling Center. All those are contained within the Church and the Elementary School. It is very possible that those would expand into there own buildings and so there may be a school just for counseling and other buildings just for Bible College.

FOSTER: Other questions?

MALONE: I have a question for staff now. I am sorry I am asking so many questions but I am trying to make a point. Dale, just curious how come the residential area just as Meridian or as McClean or no. The angle-street right there, Womer, why is that all single family and residential to the east of there versus commercial zoning? Usually at an intersection like that you have a commercial use. Was that road improved later that severed that? Do you know?

FOSTER: Are you saying to the east?

MALONE: Yes.

FOSTER: There used to be a school there, and now it is the police academy, North of it are homes. One brand new one where you see the word 37 there is a brand new home facing south there into the police academy. Any other questions? I wanted to ask Mrs. Sloan, would she please come back to the podium? The Neighborhood Association that you are referring to Sherwood Glen now the subdivision to the east is Sherwood. Does it include any of the people who live to the south of this site?

SLOAN: All of them.

FOSTER: All of them.

SLOAN: We call it Sherwood Glen because we are bigger than Meridian Gardens I guess. But if you see our newsletter we have them on the newsletter that we put out.

FOSTER: Did some of them residences sign these petitions?

SLOAN: Yes they did.

FOSTER: They attend your meeting and so forth?

SLOAN: They are not as good as we are in our, part of our neighborhood. We have maybe thirty to fifty people is all that comes to any of the meetings. Yes, some of them do. We have one of them that is a member at large on our officers that lives in that area. They also deliver the newsletter to them. We walk and do it all and save money that way.

ROGERS: First of all, I want to clarify how much I respect your involvement over the 20 years on the CPO, and I do not want you take my question the wrong way.

SLOAN: It puts me in a different position to have to do this. I am usually on the other side. I am sitting over there where you are.

ROGERS: Did a group of people with your organization choose this wording?

SLOAN: We looked at it and we did not know what to put on it. I talked to the CPO office and so we just put something about why we objected and mainly it was because of the largeness of the sign.

ROGERS: I am just trying to picture, if I lived in this neighborhood which, I am very familiar with this area and you came around to my house, how I would have taken this. What you would have told me about the large sign.

SLOAN: Sixteen feet high, is what they were told. We knew for sure and I think they were probably told 12. But, it was the height; in fact it was the height. In fact it was height at the CPO meeting that bothered them more than the width. Even though at that CPO meeting we believed that it was 12 feet.

ROGERS: Do you feel like part of these people or most of them were told it was going to be 12 foot wide?

SLOAN: I am not sure, because I carried some of those and basically all that I told them was that it was 16 feet tall.

ROGERS: That was mainly the concern?

SLOAN: That was the big concern.

ROGERS: My final questions. Now, of all of these people who signed this in your estimation? What is the furthest distance block-wise that some of these people live from that location?

SLOAN: Where the Woodrow Ditch is there a little beyond that to the east. I do not think that the last street or so they got around to it, we did not have time to do it.

ROGERS: I noticed that one address was over on Fryer Lane.

SLOAN: Fryer comes right off of 37th Street to begin with and runs into the ditch to the Woodrow Ditch and in order to get the east side you go to Woodrow Ditch and go down the east side of it and over. What is the address do you know?

ROGERS: This one happens to be 4061 Fryer Lane.

SLOAN: It is on that side.

ROGERS: It seems to me that it is quite a distance from this location.

SLOAN: I think that the concern is that the fact that is really our egress and ingress to our area. Most people come that way and you can use Arkansas. But we have one way in and out and that is 37th Street. That is their concern.

FOSTER: How often does your group meet?

SLOAN: The Neighborhood Association meets every month because there is the Tuesday night crime block party we will not meet in August. But other than that we meet, depending on Christmas sometimes we don't meet Christmas we do not take any time off other than those two. We for sure take August off.

FOSTER: Thank you. Is there anyone else in the audience to speak to this? I would like to ask J.R. Cox something. Is there anyway that you could compare this to a commercial sign? What has your experience been with typical monument commercial signs? While you are thinking about that in an unbiased manner, you know 16 feet is the height of a peak roof of a single-family house. So it gives you some concept of how high 16 feet is for a single floor house. I also have the feeling here that the neighbors may have been misinformed or confused on the idea whether it was 12 feet wide. I would not vote for it if it were 12 feet wide. I can feel their concern. I imagine that it is as big as it is because they have so many activities that they want to have a reader board to express and have a desire to have a larger sign. I might point out that traffic at that location is 45 miles an hour on both sides. There is a stop light right at that intersection so people are not going 55 or 65 miles an hour to see this. J. R. can you give us some comparison as to what a typical monument sign is?

COX: That is hard to answer. Most commercial signs are not monument signs. Most are pole signs at least 25 foot if they can go higher than that they do. If it were a monument sign and it were commercial it would be at 25 foot. Probably would be and it would be as large as they could get and their intent of course to advertise their product or to make their location known for people coming by the property. In this district the sign could be 20 foot in height and it could be a pole sign 20 foot in height as long as it does not exceed the maximum 48 square foot on the arterial.

FOSTER: Could they have a higher monument sign as well? Up to 20 feet?

COX: Yes. They would have to modify the size of the bases obviously because they have a maximum by law. They could go 20 foot.

ROGERS: Question for J.R., I am looking at the last page of our secretary's report, J.R. From where they are saying that sign is going to be how far from the nearest corner from the nearest intersection?

COX: You are asking about the sight triangle of the corner of the intersection of two streets. It is 50 foot. It would start at the imaginary intersection of the curb lines and go each direction 50-foot and draw a line connecting those two points. Now the ground sign can be there. I am guessing on this one it is well out of that 50 foot.

FOSTER: Being how far back from the right-of-way of that road?

COX: It would depend. This particular schematic shows an extremely large right-of-way and the corner is actually cut back so I am sure that would be part of the permit process and they would have show that it is. Just looking at that I am guessing that it is.

FOSTER: But obviously we are confining the discussion to the board at this point and I should have said that a little bit earlier. I am wondering whether this should be returned. I have a feeling and intuition that the neighborhood group reviewed these views as sort of the situation as to how this would effect their neighborhood. They have not had a lot happen on that corner up there. They have a police academy, they have houses, they have the Womer Addition, that was never developed it is vacant over there and a wheat field. I think they see this as an opening and a beginning that maybe sets some precedence to their area up there.

I just wonder if there is a time problem for the church here, or whether it is possible for them to meet the neighborhood and even CPO look at this in the light of the actually size that it was intended. To meet and to see if there would be any change in their opinion. It does seem very large to me. I know the location and I live up in that area not in that neighborhood but I live down near south of 29th Street and I know this area very well. It just seems to me that it does seem very large. Part of the reason is that there are no other signs basically around there. There might be one for the police academy in other words it stands out because there is no other size to compare it to. So it is going to be very noticeable.

PITTS: Mr. Chairman, you mentioned and indicated in your remarks the objection to the height of the sign and comparing the 16 feet I guess to the height of a normal house. As I understand it the height now without taking the increase in square footage into consideration the maximum height permitted now is 20 feet actually. We could only have 48 square foot of signage instead of 96. We are not really talking about height here as much as we are the total size of the sign.

SWANN: They are asking for double than what they are really allowed in this zone?

FOSTER: Which is like a hundred percent increasing in total size.

PITTS: In total size not height.

MALONE: I would probably make a motion to approve this sign for a couple of reasons. Number one that is a 96 square foot sign, on a 5-acre tract of land. Number two whether improvements are zoned light commercial the property to the south is zoned light commercial and given the arterial and the access to that Highway K-96. I think without going on a limb here you would have a pretty good chance to getting the balance of the property rezoned, light commercial. I am not sure these people have an interest in doing that. The third reason I would make a motion to approve the sign, I think the location of that sign relative to the residential that 96 square feet is not going to look like 96 square feet. If you look at a sign that is 16 foot tall and 8 foot wide in this room it is going to be just a little bit wider than one of those panels that is 4 foot in width or 5 foot in width. But, when you are a 150 feet away from it. I make a motion to approve this.

FOSTER: Whether it is twice the height?

ROGERS: Mr. Chairman, I feel I agree with Doug. I know that there was a lot of work on these petitions that were presented to us. But, I am not sure that everyone that signed these petitions knew exactly what the facts were, so I am not putting a lot of weight on this and that is my feelings.

FOSTER: I think that it is unfortunate that they went through all of that trouble thinking that it was 12 feet and I think that is unfortunate. I am more inclined to defer it for the thirty days to give them a chance to have more input or at least clarify that if they would like to do it. Is this a time problem, Mr. Teeter, to the church?

DICKGRAFE: Bickley, I think based on the CPO statement that they are not going to meet in August that it would need to be deferred 60 days.

SLOAN: No. The Neighborhood Association is not going to meet, but the CPO is going to. In fact we are meeting tomorrow night.

FOSTER: Is this a particular time problem to you all?

TEETER: The new school opens the end of August versus September and so we had hoped to have the sign up right now.

FOSTER: You are talking about the Bible College?

TEETER: No, the elementary school. I do not know that I am prepared to delay it that much without talking with the church. I certainly want the neighborhood to be happy with the choice. I do not know if the drawings were available at the Neighborhood Association meeting.

FOSTER: Mrs. Sloan stated that they were.

TEETER: The correct dimensions were on the drawings if they looked at that. I certainly did not intend to mislead anybody on the size of the sign. Obviously, I would like it to be as small as possible in their eyes. I am not sure how that miscommunication came about. Obviously, I do not feel comfortable in delaying the sign without talking with the church.

FOSTER: Thank you, Mr. Teeter. This sign is going to be there a long time a long, long time. Mrs. Sloan has and is indicating this is their entrance to their neighborhood and this is the entrance to Wichita when you get off the interstate there. But, it will be a very dominant sign in the area. Mainly, because there is nothing to compare it and there is no backdrop to it so to speak and it will stand out.

BABICH: Mr. Chairman, my thoughts on this are that it is a large sign and the technicalities aside. I think what I keep in mind is I would like to see the Word of Life Church, their mission go forward because they do have things that we as individuals need and we as community need. But it is my feeling that lowering a sign that is this large does not impede their mission. Looking at the make-up of the sign there is six lines there that that a counseling center that we could almost take for granted that any church is going to be a counseling center. Then I would question the value of the Spanish line and then there are four blank lines. Then if we put all of those together there is 4 feet of sign that could be eliminated. I am also sensitive to what the neighbors think about a sign and they are all going to be better off if their in lead with the neighbors in whatever they do. Whether it is a commercial venture or church or another neighborhood as far as that goes. Not only did we have some miscommunication here we also had the absent of communication in that there was an invitation by the CPO to the representatives of the church to attend the neighborhood association and I am disappointed that they would not take them up on their invitation. My inclination at this point would be to recommend disapproval of the request based on those facts.

FOSTER: Let me try something then, and you can see we have a divided Board in terms of discussion. I think this is an important decision, if you know that intersection there may be a sign for the police academy, we are setting precedent in the area here. To be one hundred percent bigger than necessary. It is going to be a very noticeable sign and I would like to feel that since the neighborhood has gone through some trouble to review this and they have gone through a lot of trouble to try and petition. I think so that we fully understand their thoughts and that they are given the opportunity to fully understand it I would like to make a motion to defer for 60 days for further input from the area. In other words at our regular meeting in September.

PITTS: Mr. Chairman, I am just wondering about the appropriateness of this Board requesting a deferral of action. We have been petitioned to act, can we then turn and ask to have this petition deferred or should that not come from the petitioners? The applicant has already indicated that they are not willing to ask for a deferment.

FOSTER: I think the other point that Mr. Babich made was that there was no one present from the church that was able to give the opportunity to explain it to the neighborhood group. Of course the first case that we had today was the applicant itself that asked to have it deferred in order to talk to the neighborhood and actually meet with them. They had missed the opportunity.

MALONE: Why don't we ask the applicant again, if he would agree to a deferral.

FOSTER: Mr. Teeter, do you feel comfortable that this matter and that you see somewhat a divided board in front of you here. Would you feel comfortable having this deferred for 60 days to provided proper discussion with the neighborhood and so forth as you all see fit.

TEETER: I really don't. But I do not want you to see that I am, I would like to have discussions with the neighborhood and in fact I was at the CPO meeting and I was invited to that meeting and I planned to attend. I had another engagement and so I asked one of the Pastors to attend and apparently he did not. We had fully intended to attend that meeting an answer any questions that might have come up. So, I apologize for that and if there is anything that I can do to clarify that with the neighborhood I would be happy to meet with them. A sixty-day deferral, I honestly can say is probably going to exceed what the church wants to do. If this Board did not pass the variance I think that we would be able to have the sign installed in another manner before that time period. I guess I would prefer not to defer it. I would offer if height were the main issue I would be willing to compromise on the height of the base of the sign. It is currently 4 foot 8 and I have no problem cutting that done to 2 feet to 2 foot 8. To help with that situation. If somebody wanted to make that one of the conditions.

FOSTER: I believe the Board heard that. I suppose my personal concern is that, and maybe it is just my observation, is that monument signs are much more visible than pole signs. When you are driving by you can look at the pole sign pretty quickly but a monument sign kind of stands out in your face as you go by. If you look on Rock Road and a few others they are made that way and they are designed that way. Perhaps this is more intrusive than would be a pole sign or something like that. You have heard the comment of Mr. Teeter and let's see. I have made a motion to defer this for 60 days to provide that opportunity for review. Maybe we should ask Mrs. Sloan do you want to comment on the motion? Would that serve your purposes?

MALONE: Excuse me, she is not the applicant.

SLOAN: I am not the applicant so I can not speak.

FOSTER: No I did not know whether it was convenient to meet or something like that.

SLOAN: I do have one thing that I would really like to say though, even though I do not have the floor. They do have a sign right now that is put up on the northeast corner of this parcel of land that does give information and it was just painted this last weekend. It gives information and it is a 4 by 8 I think but I am not sure.

FOSTER: Sort of a temporary sign? Or something.

SLOAN: No, it is one that they have had for a long time and I have been told at our CPO meeting that they dreaded it. It does have information about the schools and that sort of thing. School is going to start pretty quick anyway.

FOSTER: It is on the frontage of this site?

SLOAN: Yes, it is to the north, where you come off K-96.

FOSTER: Is it a portable sign?

SLOAN: No, it is a billboard.

FOSTER: J.R. Cox, any knowledge of it?

COX: I think there is an old billboard on the northern portion. I do not know if it is on that property. But I believe that there is an old billboard to the very north. I do not know what message is on it because I have not been out there in awhile.

FOSTER: I think we need to make a decision.

DICKGRAFE: I think that there is a motion that needs to fail for lack of a second.

FOSTER moves to defer the case for 60 days. No second.

MALONE: The reason I am making this motion is because I can find that all five of the facts set out in the secretary's report do exist.

MALONE moves and PITTS seconds: That the Board accept the findings of fact as set forth in the Secretary's Report; and that all five conditions set out in Section 2.12.590 (b) of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted with one modification that this exhibit and the base of this exhibit be 2 foot 8 inches in height and that the overall height of that sign be 14' 8". And that the installation date of this sign be within one year of the BZA action or said action is null and void.

COX: If I may, quite regularly and the conditions on a sign like this there will be a one year install date or the BZA is null and void. I noticed that it did not have that from staff and I do not know if there is a reason for that or if it was just an oversight. If it were your pleasure, I would not be opposed to seeing that in there.

MALONE: That language should be added.

FOSTER: One year Dale or six months?

MILLER: That is usually what we have, this is a cut and paste job.

FOSTER: Would you like to add that Mr. Malone?

MALONE: I just did.

FOSTER: Ok, has everybody heard the motion? Do we have a second to Mr. Malone's motion? I do intend to vote against it because I do feel that there has been some confusion about it and I think the neighborhood should have an opportunity to hear it. Any further discussion?

BABICH: Yes, I would question item number three and item number four in opposing this. In strict application and I do not think that it does put an unnecessary hardship. Number four the granting of the variance will not adversely affect the public interest and does not speak to the 160 public people who signed the petitions against it.

FOSTER: Any other comments? I am going to call the motion. All in favor. All opposed. We need to have a raising of hands here. All those in favor of the motion please raise your hand. We have three votes in that area. All those opposed to the motion please raise your hand and that is three. So we are tied three to three. We do not have a fourth vote and so I am not a lawyer I believe that this is carried over automatically by our rules to the next meeting.

DICKGRAFE: It can be carried over or there can be an alternative motion made. I think that if it is the Board's assumption that if the motion would be to deny that it would be the same vote, then it can be deferred to the next meeting.

FOSTER: In others, Mr. Babich, you may not know. Unless there are four votes for something either for or against it, it is not acted upon by this Board. Is there anybody that would like to make another vote or motion or would you like to have it carried over? Or the affect of not having another motion would be to have it carried over to the next meeting. We do have seven members and it simply would be heard again at that time. It would be confined to the Board here. Although a new member would have to here something I guess to hear it. Right? A new member would have to hear it again?

DICKGRAFE: Yes, or at a minimum be provided the minutes.

MALONE: So, unless a different motion is made and that motion changes this vote.

FOSTER: Do we have any motion that might change this vote or do we leave it as it is and carry it over to the next meeting? Then it would be reheard to the satisfaction of the additional member Randy Phillips, is not here today but will be here next month.

MALONE: I am not sure that Randy does not have a conflict of interest because of Brad.

FOSTER: That is right, this is a partner or member of his staff. That maybe why Mr. Phillips, is not here today. Two out of four of these cases he had a conflict of interest.

PITTS: Would this effectively have the same effect of deferring this for one month?

MALONE: Yes. Unless we have a new motion that is a change in the vote. Yes.

BABICH: I am sorry, I do not understand all of the parliamentary about this probably. But, there is a motion made to approve this and it was not approved.

DICKGRAFE: There has to be a vote of four members. The bylaws read that there has to be a vote of four members to have an action. Whether to deny the request or to approve the request. So at this point, we do not have the majority of the Board voting yes or not.

MALONE: If somebody made a new motion to deny and one of the three that accepted it early changed their mind then it would be approved to deny. Is that right?

DICKGRAFE: Yes.

FOSTER: By seven members four would be needed if we had all seven here and that has been the rules for many, many years.

BABICH: It is just different then some of the other governing bodies.

DICKGRAFE: Our bylaws are unique in that aspect. That is correct.

FOSTER: Many BZA's just simply have a majority of the quorum present. But, ours has a higher standard in order to pass it. I am hearing no further motion so.

BABICH moves and SWANN seconds: That the Board accept the findings of fact as set forth in the Secretary's Report; and that all five conditions set out in Section 2.12.590 (b) of the City Code as necessary for the granting of a variance have not been found to exist and that the variance be denied and citing items number 3 and 4 that the denial would not put a hardship on the applicant and that the granting of the variance would be adverse to the public interest because of the petitioners who signed opposing.

PITTS: Mr. Chairman, I do not want to give the new member any bad indication that we do not get along on this Board, because we normally do. I simply do not think that enough information has been presented to change my vote. I will be voting for denial.

FOSTER: My feeling is that the neighborhood and that the CPO, I should not say CPO that is unfair to say that, but at least the neighborhood group seemed to me went through a lot of trouble here and was not perhaps fully informed of it. It is a large institution there that they all need to live together even though I feel they need some size of sign that is more than 48 feet. I would hate to see them go and apply for commercial zoning and then they could even get one bigger. I would vote against the motion even though I have a lot of sympathy to it. If this were voted down then they would have to come back if they wanted to have anything bigger. They would have to start over and they would have to pay the fee.

MALONE: We have a motion on the floor and we have a second.

FOSTER: Any further discussion on this point?

PITTS: If I may have a clarification of how does one vote to deny?

FOSTER: If you vote for this motion this would not approve the request.

PITTS: If you vote for the motion you actually deny the request. If I vote against the motion what am I voting for?

DICKGRAFE: Either way it would have to come back to the next meeting.

MALONE: The same thing that we did earlier.

FOSTER: Any more further discussion on this particular motion? My only problem is that I hate to see them and I think this needs to be discussed again and if this goes back as a denial this means that they have to reapply if they want to and that is what a \$300.00 fee again.

DICKGRAFE: Actually they could not reapply without new facts. Because once it is denied this Board can only hear it again if there is a change of facts or circumstances in the application. If it is denied it is gone. They would have the rights to appeals that decision.

FOSTER: Right, they could come back with a different size just as the sign did, the one that came 60 feet and went to 35 feet. They would have to come back.

DICKGRAFE: Right. But the Board did not ever vote on the Cambridge sign. That was deferred and that was withdrawn. So the Board never made a resolution of that application. So I disagree that those are the same circumstances.

FOSTER: Are you saying that they could not come back and say now we want a sign of 85 square feet?

DICKGRAFE: I would think that they would have to show some material change of facts and circumstances. It is not going to be any different than the garage situation that the Board has refused to look at or the Intel Corporation Appeal that the Board refused to look at, simply changing your mind or trying to alter your plans may or may not constitute sufficient fact for the Board to re-look at the application.

FOSTER: Does that help to explain, Mr. Babich?

BABICH: Would the change of the facts be, the withdrawal of the petitions by the neighborhood?

DICKGRAFE: Yes. Certainly if the vote is deadlocked it has to come back.

BABICH: So if they do get with neighborhood and get consensus on what should come before the Board that would be a change of facts. That would allow them to bring it back without any additional fees?

DICKGRAFE: Yes. If the vote maintains at 3 to 3 it is going to come back. There has not been any final resolution. It has to come back by the bylaws. And then in the interim the parties are certainly, probably in this case, encouraged to try and work out some of the differences. Much like the first case that we heard today which was a pretty divided Board on the Wesley Hospital or residence expansion. They came back today and had worked out a lot of those issues.

SWANN: Then with the tie vote it will automatically come back?

DICKGRAFE: It will automatically come back.

FOSTER: But when it comes back and we have all seven members, Mr. Phillips would be here and he has a conflict of interest and would have to abstain. It would really be a matter of how many people show up next month. Unless all six of us show up. You have heard the motion; I am going to call the motion then. Everybody is satisfied that they know the alternatives?

MALONE: Please repeat the motion.

BABICH moves and SWANN seconds: That the Board accept the findings of fact as set forth in the Secretary's Report; and that all five conditions set out in Section 2.12.590 (b) of the City Code as necessary for the granting of a variance have not been found to exist and that the variance be denied and citing items number 3 and 4 that the denial would not put a hardship on the applicant and that the granting of the variance would be adverse to the public interest because of the petitioners who signed opposing.

MOTION FAILS AND CASE IS DEFERRED FOR 30 DAYS. Vote 4 to deny and 2 to approve.

FOSTER: Any other motion? Not hearing any other motion, I will declare that this will be carried over to next month, and so there will be a 30-day time. It will be reconsidered and reheard at that time. In other words, it will be opened up and discussed for whoever wishes to discuss it because we may have a new member here. Dale, I suppose you can not answer this but I mean will we have any other new members at all by that time? Mr. Phillips has been re-appointed.

MILLER: Mr. Rogers, Mr. Pitts, I believe Mr. Malone and Mrs. Swann maybe the only two but I am not positive. Do you know if you have been re-appointed anyone of you? We have not seen anything.

PITTS: You mean my time went up?

LAUGHTER

PITTS: I was not aware of that.

DICKGRAFE: Was that wishful thinking Mr. Pitts?

FOSTER: This may be decided by what members show up next month. I am sorry this is so much. But, I think that there has been some misunderstanding along the way and that you have thirty days and whatever you wish to present next time. We appreciated you coming. You Mr. Teeter, you might give the results to Mr. Phillips so he knows what has happened here and that he will have to disqualify himself next time as well. Do the members want to take a break or do we want to finish this up.

6. Case No. BZA 20-99, Country Acres Baptist Church, pursuant to Section 2.12.590B, Code of the City of Wichita, request a variance to allow existing parking to remain in the setback on property legally described as follows:

A complete legal description is available for public inspection at the Metropolitan Area Planning Department, 10th floor, City Hall, 455 North Main Street, Wichita, Kansas. Generally located at Ridge Road and 13th Street.

BACKGROUND: A building addition is being constructed to the south of the existing church. As part of the site plan review for the new construction, it was discovered that the southern most parking lot, located south of the existing church and west of the addition, encroaches five feet into a five foot side yard setback that was established by a 1984 Board of Zoning Appeals case (BZA 71-83). BZA 71-83 contained a provision that reduced the setback for the parking lot located along this portion of Morgantown from 25 feet to five feet. The other conditions of approval associated with that BZA case are attached. According to the applicants, this parking lot has been in this configuration and location since 1984. The parking lot is paved, but not striped.

There are single-family residences located west of the parking lot, across Morgantown. There are also single-family homes located to the south, however the lot immediately south of the parking lot appears to be developed with a fenced swimming pool and is identified as "Fort Harshbarger". The church owns the lots to the east and north of the three lots containing the parking lot in question.

The church's building addition is of sufficient size that it triggers the need for compliance with the city's landscaping ordinance. A landscape plan has been submitted and is approvable, subject to conditions listed below (the plan is attached). The landscaping will have to be located in the street right-of-way if this variance is approved. The Traffic Engineer has approved plantings in this area, subject to certain conditions.

ADJACENT ZONING AND LAND USE:

NORTH	"SF-6", Single-family; church
SOUTH	"SF-6", Single-family; swimming pool and single-family residences
EAST	"SF-6", Single-family residence; church
WEST	"SF-6", Single-family residence; single-family residences

UNIQUENESS: It is the opinion of staff that this property is unique inasmuch as the site is already developed with the church and the parking lot in question. The parking lot has been there since 1984.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the parking lot already exists and has since 1984. At the time of preparation of this staff report, there had not been any complaints to staff from neighbors. Churches are permitted uses in the zoning district surrounding the site so a church and its related parking are not abnormal uses in this type of situation. The question is, does the lack of a five foot setback from the property line negatively impact nearby properties. The proposed landscape plan will screen and soften the view and somewhat reduce noise from the lot.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulations may constitute an unnecessary hardship upon the applicant, inasmuch as the site is already developed with this encroachment. Additional expense would be incurred by the applicant if five feet of existing paving had to be removed and new paving placed to maintain current parking capacity.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the parking lot does not encroach upon public right-of-way. The City's Traffic Engineer has approved the planting of landscape materials in the street right-of-way, subject to conditions.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch the purpose of the setbacks is to provide light, air and open space. Those elements will not be compromised by the continued use of this area by a surface parking lot.

RECOMMENDATION: Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance be granted, subject to the following conditions:

1. Landscaping is to be installed according to a plan approved by the Director of Planning and the Traffic Engineer that contains planting materials one and one-half times the minimum size specified in the city's landscape ordinance (e.g. shade trees-3 inch caliper, ornamental trees-1.5 inch caliper, conifer trees-7.5 feet in height, shrubs 3 gallons).
2. The parking area shall be striped and maintained in accordance with approved site plan within three months of the approval of this request.
3. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any or the foregoing conditions.

MILLER: What I just handed out is a revised site plan and landscape plan and I think what came in your packet, looks real similar but the dimensions are different and there maybe some other changes. But the one that is stapled to your staff report you can throw away. What we have here is a situation where apparently a parking lot has been built into a setback. Back in 1983 there was a provision, a variance granted to reduce the setback from 25 feet to 5 feet. That parking lot was constructed and has been that way all these years and now the church is building a new building. That new building is of substantial enough size that it triggered the landscape ordinance and so there was a site plan review and permits and so forth. In the course of reviewing that permit it became obvious that the parking lot is built to the zero standard. Instead of having the five-foot setback there is not a setback. They were suppose to have maintained a five-foot setback and the parking lot is built out to the property line. So that necessitated this request for the variance to reduce the front yard setback from five feet to zero.

Let me show you the slides, 13th Street, this would be Ridge over here. This is the older site plan but it gives you the general idea there is a street that curves around here the parking lot that is currently in this general area. This would be the new building that is being constructed to the South of the existing church here. There is another parking lot on the north side of the church that exists today. This would be the parking lot in question there was suppose to have been a five-foot setback here and it appears that there isn't. We are looking north these are the existing church homes on the westside of the street. Another shot of the parking lot looking to the south you can see other homes.

I am not sure exactly what this is on the south side of the church property it appears to be a swimming pool. But it is fenced in and it is identified as Fort Harshbarger. So, I do not know whether that is some sort of neighborhood swimming pool or whether it is a swimming pool that belongs to the property owners on either side. I do not know maybe the church owns it I am not sure. It is a little bit of a different circumstance, again another shot looking north back towards the existing church, and a drive approach. This is the property line between the church and what looks like a swimming pool and the hedgerow, elm trees, and some of the homes further south. To the west. And back to the aerial.

In staff's opinion, this property is somewhat unique in that it is already developed with the church and the parking lot. The parking lot has been there since 1984, as far as we know there has not been any complaints to the planning department and I don't know that there has been any complaints filed with the OCI department, in all that time in terms of the encroachment. Churches as you know are permitted uses in the single family zoning district and it is just that as long it is zoned single family you can't use any portion of the front yard setback for parking. That is why they came back in 1983, probably, to get the original reduction in variance, it is just a question of the 5 foot not being observed.

With the construction of the new building, the landscape ordinance triggered. As you can see on the site plan that was handed out that there is landscaping that they are proposing. That landscaping have been approved. It has been reviewed by the traffic engineer, for safety in terms of sight visibility because of the curved nature of the street. We are recommending approval of those recommendations is based on page 3, or the conditions of approval are on page 3.

Essentially, it is 1 ½ times the landscape ordinance and that is what they are showing on this revised site plan is those sizes. The site is not striped today. One condition is that the parking lot be striped and the other standard conditions. Any questions?

FOSTER: Dale, I have two questions. One, just to make sure this five feet is not in the right-of-way right? It is on their property.

MILLER: Correct.

FOSTER: Secondly, by the additional building they are still going to have enough parking?

MILLER: I believe so. I did not actually calculate that. I am assuming they would not have gotten a permit if they did not have enough parking for the square footage.

FOSTER: They have a permit to add this building at the moment?

MILLER: They have the conditional. When they were going through it and they discovered the need for the variance. It is my understanding that they do not have a full permit that they have a conditional until this gets resolved.

FOSTER: So the parking would be considered at that time? Do we have other questions of the staff?

PITTS: I would like to ask one thing, at the end of your background you mentioned that the landscaping would have to be located in the street right-of-way if this variance were approved. A traffic engineer has approved planting in this area subject to certain conditions?

MILLER: They were and they are reflected on the landscape plan. What he was after was to plant materials that would have maximum heights so that when you are sitting in your car you can view out in the sight triangle and that is what he was looking at.

FOSTER: Any other questions of staff? Thank you, Dale. Is there an applicant here to speak to the case?

KELLY RANDOLPH, PASTOR OF COUNTRY ACRES BAPTIST CHURCH: First of all, I have no idea why the parking lot was built to zero setbacks. I was not here at that time so I really can not speak to that issue. We had a representative at the CPO meeting on July 15th to talk about this and the CPO voted 8-0 to approve the request subject to staff comments. As far as the parking, we have met the parking requirements along with the addition of the new building that has already been discussed and approved.

FOSTER: May I ask you then, is this five feet essential to meeting those parking requirements? Are you aware or do you know?

RANDOLPH: I believe it would be.

FOSTER: How many spaces would be involved with that five feet do we know? How critical is it?

RANDOLPH: Twenty to twenty-five spaces.

FOSTER: A substantial number. Are you in agreement with the staff report?

RANDOLPH: Yes, we are in agreement with all the conditions and we will gladly conform.

FOSTER: Is there anything else you think the Board needs to know?

RANDOLPH: I do not know that I have anything else to say. I am talked out.

FOSTER: Any questions for the applicant? This may be your lucky day, Mr. Randolph. Is there anybody in the public that wishes to speak to this matter? Hearing none, I will close the hearing to the public portion and confine the discussion to the members. Certainly, anybody that might have been aggrieved by this has been for twenty years or so. Quite a period of time to be concerned about it and they are obviously not here or did not complain to CPO I would think that they would take advantage of having this landscape which would make it even nicer. Do we have any discussion on this matter? Do I hear a motion?

ROGER moves and PITTS seconds: That the Board accept the findings of fact as set forth in the Secretary's Report; and that all five conditions set out in Section 2.12.590 (b) of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions set out in the Secretary's report on page three and that we have reviewed Dale's handout regarding the plans.

FOSTER: Any further discussion? Call the motion.

MOTION CARRIES 6-0.

FOSTER: Thank you all. I apologize that you had to wait for Agenda item number four today. Let's go to the next item.

7. Report of Central Inspection regarding compliance with requirements of various cases.

FOSTER: I will let Mr. Pitts know that we will be having elections after that.

J.R. COX, OFFICE OF CENTRAL INSPECTION: I have four BZA cases to report on today. The first is 6-98 this was a variance to allow compatibility standards to be reduced from 25 foot to 10 foot, it was at 735 N. Gow, this BZA case is in compliance.

BZA 8-98, this was variance to allow a 10-foot rear building setback, this was on 9th and Edwards on the southwest corner, and this BZA case is in compliance.

BZA 11-98, this was variance to reduce compatibility setback on two sides of this property north side from 25 feet to 20 feet and the east side from 25 feet to 10 feet, 1010 north Tyler, this BZA case is in compliance.

BZA a variance to reduce front yard setback from 25 feet to 15 feet that was at 3718 west 20th North and that BZA is in compliance.

FOSTER: Any questions for J. R. Cox?

MALONE: No.

FOSTER: I have asked Dale a question, I do not know whether that some of you might have noticed in the newspaper today. I was a little bit surprised to find that the school board was discussing the use of towers, as to whether other companies would be allowed to use them. Those who are on the Board at the time and Mr. Babich, you might be interested you were appointed, hopefully, at a better time. We heard 47 tower cases exceeding over a year period of time and I just wanted to double check. We have a comment if you would read that in the newspaper from the Assistant Superintendent of the School Board that says that basically we designed it. How does it read it there, Dale?

MILLER: "They were designed solely for our purpose", is what it reads.

FOSTER: What did you find by reading our conditions? They have been handing them out to everybody. This was just a sample one.

MILLER: It turns out the school towers were treated a little differently then we do standard what I would call, commercial communication towers. If you were all cell phone companies and you wanted to put up a tower, the zoning code today would require you in order to get a permit, you would have to not only have the proper zoning, but, to apply for that proper zoning you would have to show proof that there are no other towers in the area that will work for your purposes. If there happened to be another tower in your area, you would have to prove to us that you could not go on that tower. That it structurally would not hold you first and then you would have to prove that if it was structurally unsound that the cost to rebuild that tower and for you to go on with the other current users would be more expensive than it would be for you to build a new stand alone tower. Under that, and there are other things that are required in terms of commercial communication towers.

Apparently, how we had treated these microwave towers for the school was that they were accessory uses and that as long as there is only school antennas on there and one other carrier. Now, OCI may not agree with that but that is what and how Marvin remembers it, I will say it that way. That if one other carrier wanted to go on there, they would have to come and get zoning. But that if they were approved then the towers could be rebuilt and one additional carrier, if there were more carriers that wanted to go on there then it would be considered a commercial communication tower and they would have to comply with all the rules. So, the school towers are a little bit different in terms of the way that they were treated then what a commercial communication tower is.

FOSTER: Do I not see that point here. It was more of an understanding with them that one other carrier could be added?

DICKGRAFE: I think when we discussed these and when they were approved, that the first two or three that were approved said that we were only going to have the school board on those towers. Then I think that it was pointed out that perhaps we wanted to allow the school board to explore commercial uses. One, it would be a moneymaker. Two, we did not want these towers everywhere. So, we took out as a condition of some of the resolutions for the latter ones. But, I do not recall the Board ever making it a condition that they had to allow other carriers on the towers.

COX: I will go a little further with that. This was actually the first article that I saw in the paper today and I have talked to some people in planning. Apparently, my superintendent has also made the interpretation that one other group can go on these towers. I have not heard that, he is gone for two weeks so I can't verify that. That is not what I am aware of and I am aware that these were allowed in as exactly what it says, "accessory uses" what we would call, non-commercial accessory towers for the use. So that one, a commercial use would not be allowed to go on there. There was some discussion at the meetings about that. As I recall the Board said, rather than us trying to decide what can go on there and what can't we are just going to deal with what we have in front of us, which is for the non-commercial towers and we will let the rest of it go. Because that would be a use that would have to have the proper zoning, unless I am wrong, the proper zoning, which none of these do I don't believe.

MILLER: Marvin and his memory, which is what he, says.

COX: According to your staff that is what my superintendent also agreed too. But, I do not have any first hand knowledge of it.

FOSTER: So if the school board voted to allow additional commercial advertising they would have to come back?

MILLER: If they were going to put more carriers on there than one. If more than one carrier besides themselves wanted to located on any of their towers, they would have to go through the full process to get the proper zoning, the conditional uses, and if they have height exceptions.

DICKGRAFE: At this point, this would have to go not only to MAPC, but also probably, the Council because of the moratorium. So, if the school board wanted to do this, it would not start with us. We probably would not get to see it.

FOSTER: When you say one, are you saying one additional or are you saying one is the school board?

MILLER: One additional to the school board is the way that it is.

MALONE: The school board and cellular one.

FOSTER: Where does it say that?

MILLER: That is the interpretation that has apparently been made.

PITTS: I do not think that was brought out as the interpretation that I understood, because I was always in favor after the first start of that. I was always hoping that the school board would encourage participation with other carriers whom they wanted to use their antennas so that we would not be overwhelmed with too many of them on the airwaves.

MALONE: I remember that too.

FOSTER: I remember some discussion like that. I just don't know.

MALONE: I know that we did not make it a condition of the approval that they have to allow it. But I knew and agree with Floyd that there were some points there that to see this thing from proliferating into a bunch of other towers, we felt like it would be to the city's best interest that the school board cooperate with another tower and allow them to do that. They were politicking are we on record? I think they were politicking at the time.

MILLER: I just know at the initial meetings that I was at part of the approval that we got from the neighborhood people was that no other carrier than the school board would be on there. That as long as it was for education they were for it. But if it was going to have a commercial carrier they then they did not want them in the neighborhood. I think that may be where this interpretation evolved as a way to try and compromise here, I am not sure. At least that is the planning department's understanding today.

FOSTER: If you would think for a moment let me ask you a question and then I will comment on something. Do you think that we should be doing something, or be communicating anything to this particular school superintendent about this? Or clarifying it. Think about that for a moment. I just wondered from the other members we ought to learn by doing something, I have looked around at a number of these towers and just made a note to do that. I haven't found them to be very intrusive. In fact I thought they were a lot less intrusive than I thought they were going to be when we hearing them. Does anybody have any thoughts on this?

BABICH: I think they are not intrusive because they pass the test through the system and those that would have been intrusive have not been approved. I think rather than this Board taking any proactive measures at this time, I am encouraged that the City has invited professional consultation on this for comprehensive plan. Because that is what has been absent. I would just hope that the school would be a part of the comprehensive plan and that we ought to just allow that to develop.

FOSTER: I do not recall and maybe others do. We did not actually disapprove any of the height if I recall they simply withdrew them for further study and came back finding that they could relocate it and lower it in different circumstances. The process worked is what you are saying.

BABICH: Right.

FOSTER: Without actually disapproving them. Dale, I only brought the clipping in because it seemed a rather bold statement. I remember some of these discussions Mr. Pitts, and I just thought whether some communication should go or should you be in touch with the staff people who were working on this before.

MILLER: I think that we are in a sense with the Perishing and Central cases that the Planning Commission heard recently and denied. Now we have the YMCA case down at the Meridian Outlet Mall case that would have been on your agenda today but is deferred because of the moratorium. One of the issues there is they have not been able to determine whether or not I think it is Coolidge Elementary which has a microwave tower, whether or not they could rebuild that one and not have to build the new tower on the YMCA site. Part of that reason is up until the school board recently took the action that they did to have more or less a moratorium of their own that they were letting each individual school site counsel determine whether that individual school would work with one of the commercial carriers or not.

FOSTER: Do you feel any communication is needed? Or is sufficient communication being put in place on this matter?

MILLER: I think that I agree with Mr. Babich. We are going to have interviews Friday with the consultants that responded to the proposal on the City study. I am sure that we are going to be working with them and see what we can sort out.

DICKGRAFE: I would agree with Dale. I think at this point, we have come such a long ways from when the BZA looked at the school boards request for towers the amount of regulation involvement in the City and trying to find a master plan is going on at lots of different levels and I do not believe that it would be of any assistants to the school board. The school board knows that this is an issue as I think indicative of the newspaper article and I do not think any action by the Board is necessary.

PITTS: I am just wondering when the City Council made the moratorium on building more towers. I didn't not know.

DICKGRAFE: That occurred two weeks ago at their meeting.

FOSTER: We are ready then for other matters.

DICKGRAFE: I might just have one announcement. Briefly, on the Intel Corporation Appeal. I have received some indication that the appeal is going to be dismissed. That is the trash receptacle that was out at the Slawson Office Complex. The parties have reached an agreement regarding some additional landscaping and some different curb cut outs for trash flow to and from the facility. The door which was the original order of this Board has been purchased and is already in place so it would appear that issue has been or will be in the immediate future resolved.

FOSTER: Any questions for Sharon?

BABICH: Do I have information on that?

DICKGRAFE: Yes.

FOSTER: We are ready for elections. Do we need to be sworn in for that or should we just wait on the next meeting for swearing in?

DICKGRAFE: Unless, you are a new appointee I do not believe that you need to be sworn in and Mr. Babich was sworn in already.

FOSTER: Our usually procedure has been that we do nominate members and vote. I have served for two years, so I am not eligible but, I have served the two years and the bylaws do not allow Presidents to serve longer. Mr. Pitts, is the First Vice-President and Mr. Malone is the second Vice-President. I would point out the Mr. Pitts, has not had a lot of experience because I have attended every meeting. The one meeting I missed was a special meeting which he did attend. He did not have a lot of training is what I am saying because I was here for two years for the regular meetings. Let's begin then. We have to elect three officers, President, First Vice-President, Second Vice-President, and Secretary. We will begin with the President.

MOTION: ROGER moves and MALONE seconds, I would like to nominate Mr. Floyd Pitt's as our President.

FOSTER: Do I hear any other further nominations? I declare the nominations closed and I will call the questions then.

MOTION CARRIES 6-0.

MOTION: MALONE moves and FOSTER seconds, that Mr. John Rogers be First Vice-President.

FOSTER: Do I hear any other further nominations for first vice-chair?

ROGERS: I was going to make a motion that Mr. Malone be vice-chair because of his longer service on the board is nominated on the board for first vice-chair.

FOSTER: Are you going to make that motion in a defensive matter?

ROGERS: No.

MALONE: Mr. Rogers, I would have to deny accepting that if I got elected because there is a good chance that by the end of the year I will not be on this Board. In fairness to the Board I would not accept, but I think you should.

FOSTER: It has been moved and seconded to nominate Mr. Rogers as First Vice-President. Call the motion.

MOTION CARRIES 6-0.

FOSTER: We need to vote for a Second Vice-President, sometimes we have even had meetings when this has happened. I think I was a Second Vice-President one time and had to chair a meeting unexpectedly. It does happen.

PITTS moves and ROGERS seconds to nominate Mrs. Juanita Swann, as the Second Vice-President.

MOTION CARRIES 6-0.

FOSTER: Now we will elect the Secretary by acclamation. Do I hear a nomination to elect Dale as the Secretary?

PITTS: I so move.

FOSTER: We do have a choice.

PITTS moves and ROGERS seconds to nominate Mr. Dale Miller as the Secretary.

FOSTER: Any other nomination? Close the nominations. Call the questions.

MOTION CARRIES 6-0.

FOSTER: So I get to turn the gavel over to Mr. Pitt's.

PITTS: Does the Secretary appoint an assistant.

MILLER: I guess I do.

SIMMERING: Did anybody keep the petitions that Mrs. Sloan presented? I will need that for the record. I think Judy Manka handed out some pictures? If you could just leave that by your nameplate. I will pick those up after the meeting.

PITTS: Any further business?

MOTION to adjourn.